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September 30, 2005

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 5, 2005

Case Number: TSO-0176

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as the "Individual") to hold a level "Q" access authorization under the regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For reasons discussed below, it is my opinion that the Individual's access authorization should not be restored.

I. Background

The Individual has been employed by a contractor at a Department of Energy (DOE) facility for the vast majority of the period from 1975 to the present. During this time, the Individual held a security clearance enabling him to perform work at various facilities.¹ In April 2000, the Individual was arrested by local police for Driving Under the Influence (DUI). The Individual also had previously been arrested for DUIs and public drunkenness as well as a number of other offenses dating from 1969. In February 2004, a DOE Psychologist evaluated the Individual and diagnosed him with alcohol dependence, in sustained partial remission without adequate evidence of rehabilitation or reformation. The local security office suspended the Individual's security clearance based on the recommendation of the DOE Psychologist and other information contained in the record.

The local security office issued a Notification Letter which commenced the administrative review process. In that letter, the Individual was informed that the local security office was in

¹ A level "Q" access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as access authorization, security clearance, or "Q" clearance.

possession of information which created a substantial doubt concerning his continued eligibility for a “Q” access authorization in accordance with 10 C.F.R. § 710.8(j) and (l).²

II. The Record

The record, which was largely uncontested, showed that the Individual has a history of alcohol-related arrests. The Individual was arrested for public drunkenness in 1969, 1970 and 1977. The Individual was also arrested for driving under the influence (DUI) in 1978, 1989, 1990 and 2000. *See* DOE Exhibit (Ex.) 27 at 2; Ex. 28. The local security office also cites five additional arrests in 1999 (violation of an order of protection), 1989 (aggravated assault), 1984 (gambling), 1970 (petty larceny) and 1969 (disorderly conduct) to demonstrate that the Individual engaged in behavior that tended to show that he was not honest, reliable or trustworthy or that he could be subject to coercion that could cause him to act contrary to the best interests of national security.

In a 1992 Personnel Security Interview (PSI), the Individual admitted that he had an alcohol problem from 1988-1990. Ex. 13 at 23. Following his arrest for DUI in 1990, a DOE staff Psychologist or Psychiatrist advised the Individual to abstain from alcohol and enroll in a 12-step recovery program, such as Alcoholics Anonymous (AA). Ex. 9 at 3-4. The Individual stated that he decided not to follow the advice of the DOE staff Psychologist or Psychiatrist and that he believed that he could reduce his drinking without the assistance of others. *Id.* at 4. In 1992, the Individual consented to an evaluation by a DOE contractor psychiatrist. Ex. 23. During this examination, the Individual reported to the psychiatrist that his current consumption of alcohol consisted of a nightly glass of wine or two or three beers. *Id.* 23 at 2. Based upon his examination of the Individual, including the results of various psychological tests, the psychiatrist diagnosed the Individual as alcohol dependent. *Id.* at 3. In making this diagnosis, the psychiatrist noted the Individual’s extensive history with alcohol-related legal problems and the Individual’s denial as to his alcohol problem. *Id.* He recommended that the Individual follow a course of total abstinence and that he join AA. *Id.* In November 1993, the DOE sought a revised opinion from the psychiatrist and provided him with information that the Individual was in the process of controlling his alcohol consumption on his own. Ex. 24. In response, the psychiatrist reiterated his concerns and again recommended that the Individual completely abstain from alcohol. Ex. 25.

The Individual was subsequently arrested for DUI in April 2000. Ex. 11. In a 2003 PSI, the Individual discussed the 2000 DUI arrest and stated that the arrest occurred on the day that his divorce was finalized. Ex. 8 at 7. Pursuant to the local security office’s request, in February

² Criterion J refers to information indicating that an individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Criterion L refers to information demonstrating that an individual has “engaged in any unusual conduct or is subject to circumstances which tends to show that the individual is not honest, reliable or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.”

2004, a DOE-contractor Psychologist (DOE Psychologist) evaluated the Individual. Ex. 6 at 1. At this examination, the Individual stated that he believed that he could safely drive after the ingestion of six beers in two hours. *Id.* at 3. The DOE Psychologist indicated that this level of consumption might qualify as intoxication. *Id.* The Individual reported to the DOE Psychologist that in the 1990s he typically consumed beer three to four times a week and could consume on occasion as much as 6 beers at one time. *Id.* at 4. With regard to his excessive alcohol use in the past, the DOE Psychologist noted the Individual's explanation in a prior PSI that the Individual's past DUIs were the product of "bad timing." *Id.*

In his report, the DOE Psychologist expressed concern over the Individual's belief that he could consume up to six beers in two hours and still drive home. Further, the fact that the Individual had imposed on himself a personal limit suggested that the Individual had a problem with alcohol consumption. *Id.* at 8. This limit also suggested that the Individual had developed some tolerance to alcohol. *Id.* at 3, 9. The DOE Psychologist found that the Individual met two of the diagnostic criterion for alcohol dependence in the Diagnostic and Statistical Manual, 4th edition, Text Revision: (1) the development of tolerance to alcohol; and (2) persistent use of alcohol despite adverse psychological and psychiatric consequences and warnings to the contrary. *Id.* at 9. In the DOE Psychologist's opinion, the Individual also showed evidence of denial, defensiveness and poor judgment concerning his alcohol use given his long history of alcohol-related legal problems and the occupational jeopardy he incurred by continuing to consume alcoholic beverages. *Id.* at 9. Given the Individual's past diagnosis of Alcohol Dependence and his continued chronic use (even at moderate amounts), the DOE Psychologist determined that the Individual's condition was not in remission. *Id.* Despite the Individual's assertion that he had remained abstinent for a period of two months following the 2000 DUI, the DOE Psychologist also determined that there was not adequate evidence of the Individual's rehabilitation or reformation. *Id.* at 10. As a result, the Psychologist diagnosed the Individual as suffering from alcoholic dependence in sustained partial remission. *Id.* at 9-10. The DOE Psychologist opined that adequate reformation could be demonstrated by several different means, including abstaining from alcohol for at least one year in conjunction with entering a 12-step recovery program or, in the absence of professional assistance, two years of abstinence. *Id.*

The Individual requested a hearing regarding the allegations described in the Notification Letter. The Individual's request for a hearing was forwarded by DOE/NNSA to the Office of Hearings and Appeals of the DOE. Subsequently, I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), a hearing was convened.

III. The Hearing

At the hearing, the Individual represented himself and the following witnesses were called to testify: (i) the Individual; (ii) the DOE Psychologist; (iii) the Individual's current supervisor; and (iv) the Individual's former supervisor.

1. The Individual

The Individual testified regarding his alcohol consumption. He testified that the 2000 DUI occurred on the day that the divorce to his second wife was finalized. Hearing Transcript (Tr.) at 67. He stated that it was a “tough time in his life,” but that he is “over that now.” Tr. at 68. The Individual also testified that his lifestyle has changed. He recently remarried and, in his spare time, he engages in home renovation projects, gardening, golf, and fantasy football. Tr. at 67. He stated that he currently consumes approximately two or three beers, three times a week. Tr. at 77. He also testified that he does not believe that he has a drinking problem, and stated that he would not fall back into a pattern of problem drinking even if exposed to outside stressors in the future. Tr. at 76-77.

2. The DOE Psychologist

The DOE Psychologist testified about his 2004 psychological assessment of the Individual. The DOE Psychologist expressed concern that the Individual believed that he was capable of driving and in possession of all his faculties after consuming six beers in a two-hour period. Tr. at 11. The DOE Psychologist stated that he believed that this statement demonstrated that the Individual had developed a tolerance to alcohol. Tr. at 11. He also testified that the Individual had a “strong family history for genetic loading for substance abuse.” Tr. at 14. He expressed concern about the Individual’s level of denial, because he stated that denial blocks “awareness and readiness to change” and is “the hallmark of substance abuse problems.” Tr. at 16. The DOE Psychologist testified that a laboratory test on the Individual’s liver functioning showed a high value of a particular liver enzyme, GGT, which a medical review officer interpreted as physiological stress on the liver. Tr. at 16. Based on all of these factors, the DOE Psychologist concluded that the Individual suffers from alcohol dependence in sustained partial remission. Tr. at 19. He testified that the Individual’s prior two month period of abstinence was not sufficient to show adequate evidence of reformation or rehabilitation. Tr. at 20.

Based on the Individual’s testimony at the hearing, the Psychologist noted a number of factors that may have a positive effect on his prognosis, such as his remarriage, lack of further legal incidents, and his good performance at work. Tr. at 78-79. He also identified a number of factors that he believed negatively impacted his prognosis. He stated:

I haven’t heard any convincing information or evidence about, number one; acceptance of an alcohol problem in his life, and number two; taking any corrective steps about that. Also, I remained concerned about the level of consumption. [The Individual] reports, perhaps, slightly less consumption than he was reporting in the past to me and to the personnel security investigator, but I have no way of knowing whether that is, in fact, accurate or true. Given his history and my experience when I evaluated him, I would worry about perhaps a natural tendency to minimize his consumption, given the context that he is in right now. I see plenty of evidence for denial and a lack of self-responsibility regarding the alcohol problem. I note that now three mental health professionals have diagnosed a problem and recommended steps to be taken and [the

Individual] disagrees with those opinions to this day. That worries me about his future.

Tr. at 79-80.

The Psychologist concluded that in his professional opinion, the Individual was not rehabilitated or reformed with respect to his alcohol dependence problem. Tr. at 81.

3. The Individual's Current Supervisor

The Individual's direct supervisor for the past three years testified. Tr. at 45-54. The Individual's supervisor stated that his work performance and attendance were good. Tr. at 45. He testified that he did not believe that the Individual presented a threat to national security interests. Tr. at 45. The supervisor also stated that he had golfed with the Individual on two or three occasions. Tr. at 46. He testified that during those golf outings, they consumed alcohol, but the Individual was not intoxicated. Tr. at 46. The supervisor also stated that co-workers enjoy working with the Individual. Tr. at 47. He testified that, based on his limited social interaction with the Individual, he does not believe that the Individual has a problem with alcohol. Tr. at 49.

4. The Individual's Former Supervisor

The Individual's former supervisor testified about his knowledge of the Individual's past work performance and drinking behavior. Tr. at 55-66. He stated that he has known the Individual for the past four years. Tr. at 57. He testified that while the Individual has been under his supervision, he has "fully performed to all the expectations" that were demanded of him. Tr. at 57. He also testified that the Individual is also performing well on a current project. Tr. at 57. The former supervisor stated that he and the Individual have seen each other in social situations several times outside of work. Tr. at 58. He stated that during those times, he never saw the Individual impaired from alcohol. Tr. at 57-58, 62. The former supervisor further testified that the Individual discussed his 2000 DUI arrest in connection with a "bitter divorce" with his second wife and being laid off from his job. Tr. at 59, 65. He stated that the Individual said that "his wife accused him of drinking all the time and being drunk around the house." Tr. at 66. The supervisor stated that he did not view the Individual as a security risk. Tr. at 59.

IV. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In resolving questions about an individual's eligibility for access authorization, I must consider relevant factors and circumstances connected with the individual's conduct which are set forth in

§ 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b) (6). Once the DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a).

V. Analysis

1. Criterion J

My review of the record indicates that the local security office had sufficient grounds to invoke Criterion J. The Individual has a number of alcohol-related arrests and has been diagnosed by a physician as alcohol dependent. It is beyond dispute that a diagnosis of alcohol abuse or dependence raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002). After an examination of the record, including the presented testimony, I find that the security concerns raised by the Criterion J derogatory information have not been sufficiently mitigated. The evidence presented at the hearing and in the record does not demonstrate that the Individual has shown adequate evidence of reformation or rehabilitation from his alcohol problem.

Since 1992, the Individual has been advised by three separate mental health professionals that he has an alcohol problem and that he enter a 12-step recovery program for his alcohol problem. However, the Individual has consistently declined to seek any type of treatment. Despite the Individual's five-year history of no alcohol-related incidents, the DOE Psychologist has opined that the Individual is not now currently reformed or rehabilitated from his alcohol problem.

The Individual maintains that he has controlled his alcohol consumption without assistance from others. The Individual's record in this regard is mixed. The Individual has a 30-year history of alcohol-related problems. In 1992, the Individual asserted to DOE officials that he would not abuse alcohol, yet 8 years later was involved in an alcohol-related incident. Ex. 9 at 4; Ex. 13 at

31-32. To the Individual's credit, there are no alcohol-related arrests since 2000. The Individual is now in a happy marriage and believes he will no longer abuse alcohol.

The Individual's lack of alcoholic-related arrests is not in itself a guarantee that the Individual is not now alcohol dependent or will not have alcohol-related problems in the future. The witnesses the Individual presented to demonstrate his reformed alcohol consumption both testified they have had but limited social interaction with the Individual at events where alcohol is being consumed.

Even if I assume that the Individual is currently no longer abusing alcohol, the risk remains that he may abuse alcohol in the future. The Individual has stated that many of his problems with alcohol arose when he was under a great deal of stress such as when he had difficulties with his then spouse. I find no evidence in the record that indicates that if the Individual undergoes a future period of severe stress he will not resume abusing alcohol. The Individual has not taken any steps to ensure that alcohol-related incidents do not recur in the future, such as demonstrating a sustained period of abstinence or involvement in a recovery program. Although the Individual stated that in the past he abstained from alcohol for a period of two months, this period is too brief to demonstrate adequate evidence of reformation and rehabilitation. Further, the medical opinion presented in this case indicates that the Individual's reliance on a controlled drinking strategy is not an appropriate method to deal with the Individual's alcohol problem. This strategy has failed him in the past.

My concerns about the Individual's future conduct with regard to alcohol are also aggravated by the Individual's denial that he has an alcohol problem. Excepting the 1989-1990 period, the Individual does not acknowledge that he has a problem with alcohol despite a 30-year history of alcohol-related arrests. At the hearing, the Individual asserted that he continues to consume on average three alcoholic drinks, three times a week. Moreover, in the course of the 2004 psychological evaluation, the Individual indicated that he believed that he would be in control of his faculties and able to drive a car after consuming six beers in a two hour period. The Individual's past history of drinking and driving and the DOE Psychologist's opinion that the Individual tends to minimize his actual consumption also raise serious concerns that the Individual may be involved in alcohol related incidents in the future.

Given the evidence before me, I believe there is a significant risk that the Individual is not fully reformed from his alcohol dependence or will be involved in alcohol-related incidents in the future. As such, I find that the Individual has not provided sufficient evidence that would mitigate the DOE's security concern related to his alcohol problem under Criterion J.

B. Criterion L

As mentioned earlier, the DOE has cited five of the Individual's arrests as derogatory information under Criterion L. Given these arrest, I find that the local security office had sufficient grounds to invoke Criterion L. However, I find that the Individual has mitigated the security concern raised by these arrests.

As an initial matter, four of the five arrests (Disorderly Conduct, Petty Larceny, Gambling and Aggravated Assault) occurred before 1990. I do not believe that these arrests continue to raise a security concern given that almost 15 years have elapsed since these arrests. However, more recently, the Individual was arrested in 1999 for violation of a protective order. The record indicates that in 1999 the Individual's wife at the time had requested and was granted a protective order against the Individual. Ex. 8 at 32. Subsequently, the Individual entered a restaurant to get something to eat. The Individual's wife was also present at the restaurant and called the police. The Individual was arrested for violation of the protective order and served seven days in jail. *Id.*

While I am unable to conclude whether the Individual's action in going to the restaurant was innocent or an attempt to harass his wife, this incident occurred five years ago and I have no evidence that the Individual has since disturbed his ex-wife. Given the age of the Criteria L arrests and the Individual's lack of non-alcohol related legal problems since these arrests I find that the Criteria L concerns have been mitigated.

VI. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance under Criteria J and L. While I find that the Criterion L security concerns have been sufficiently mitigated, I find insufficient evidence in the record to resolve the security concerns raised by the Criterion J derogatory information.

Therefore, I cannot conclude that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth under 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: September 30, 2005